

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 224

Introduced by Assembly Members Kehoe and Cohn
(Coauthors: Assembly Members Harman, Levine, Wiggins, and
Yee)
(Coauthor: Senator Soto)

January 29, 2003

An act to add Title 1.3D (commencing with Section 1748.35) to Part 4 of Division 3 of the Civil Code, relating to identification.

LEGISLATIVE COUNSEL'S DIGEST

AB 224, as amended, Kehoe. Identity verification: electronic devices.

Existing law prohibits a person or firm that accepts credit cards for transacting business from requesting or requiring the cardholder to write personal information on the credit card transaction form as a condition for accepting the card. Existing law excepts certain transactions and occurrences from these provisions, and explicitly provides that these provisions do not prohibit requiring the cardholder to provide reasonable forms of positive identification in connection with a credit card transaction.

This bill would prohibit a retailer, as defined, from ~~requiring a consumer to permit the retailer to electronically read an identification card, including a driver's license, for the purpose of verifying the consumer's age or identity. The bill would also prohibit a retailer that is permitted to read electronically an identification card to verify the age or identity of a consumer to store, sell, or share personal information~~

~~collected from the identification.~~ *electronically reading an identity card, including a driver's license or state identity card, except under specified circumstances, and then only as necessary for a particular transaction or purpose. The bill would also prohibit a retailer from storing information obtained from electronically reading an identity card, except under specified circumstances, and would require that the information be destroyed when it is no longer needed for the purpose for which it was obtained. The bill would prohibit the sharing of information that a retailer properly obtains from electronically reading an identity card, except under specified circumstances, and would prohibit completely the sale of this information.*

The bill would permit a consumer whose personal information is read, stored, shared, sold, or used in violation of these provisions to bring an action to recover actual damages or \$1,500, whichever is greater, and would permit a court to increase this amount if the violation was knowing or willful. The bill would require a court to award a prevailing consumer reasonable costs and attorney's fees. The bill would prohibit a retailer from denying a consumer goods or services if the consumer exercises his or her rights under the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 1.3D (commencing with Section 1748.35)
2 is added to Part 4 of Division 3 of the Civil Code, to read:

3

4 TITLE 1.3D. ELECTRONIC IDENTITY VERIFICATION

5

6 ~~1748.35.—(a) A retailer may not require a consumer to permit~~
7 ~~the retailer to read electronically an identification card, including~~
8 ~~a driver's license, for the purpose of verifying the consumer's age~~
9 ~~or identity.~~

10 ~~(b) When a retailer electronically reads an identification card,~~
11 ~~including a driver's license, to verify the age or identity of a~~
12 ~~consumer, the retailer may not store, sell, or share personal~~
13 ~~information collected from the piece of identification.~~

14 ~~(c) For the purposes of this title:~~

15 ~~(1) "Personal information" means any information~~
16 ~~concerning a person that may be accessed from an identification~~



1 card, including, but not limited to, a person's name, address,
2 telephone number, driver's license number, age, height, weight,
3 eye color, and hair color.

4 (2) ~~"Retailer" means a business that sells retail products to~~
5 ~~consumers, including, but not limited to, a business that serves~~
6 ~~food and beverages.~~

7 1748.35. *For the purposes of this title:*

8 (a) *"Electronically" means relating to technology having*
9 *electrical, digital, magnetic, wireless, optical, electromagnetic, or*
10 *similar capabilities.*

11 (b) *"Identity card" means a card bearing identifying data*
12 *about the person to whom the card pertains, including, but not*
13 *limited to, a driver's license or state identity card.*

14 (c) *"Personal information" means any information*
15 *concerning a person that may be accessed from an identity card,*
16 *including, but not limited to, a person's name, address, telephone*
17 *number, driver's license number, age, height, weight, eye color,*
18 *and hair color.*

19 (d) *"Retailer" means a business that sells retail goods or*
20 *services to retail consumers, including, but not limited to, a*
21 *business that serves food or beverages.*

22 1748.36. (a) *A retailer may not electronically read an*
23 *identity card except as permitted by this title.*

24 (b) *If a retailer reads only the personal information necessary*
25 *for the particular transaction or purpose enumerated below, a*
26 *retailer may electronically read an identity card to obtain:*

27 (1) *The information necessary to comply with state or federal*
28 *law requiring a background check in the sale or transfer of a*
29 *firearm.*

30 (2) *The information necessary to comply with laws against the*
31 *sale of age-restricted products or services.*

32 (3) *The information necessary to communicate with an organ*
33 *or tissue registry.*

34 (4) *The information required by Section 14609 of the Vehicle*
35 *Code for renting a motor vehicle.*

36 (5) *Identity information necessary to detect or prevent*
37 *intentional misrepresentation of a consumer or prospective*
38 *consumer's identity when identity is relevant to the transaction.*

1 (6) *Personal information when the consumer knowingly*
2 *consents after a full, clear, and conspicuous disclosure by the*
3 *retailer:*

4 (A) *That consent to the reading of the information is voluntary.*

5 (B) *Of the information that the retailer will obtain.*

6 (C) *The purposes for which the information is being obtained*
7 *and will be used by the retailer or by anyone with whom the retailer*
8 *shares the information.*

9 1748.37. (a) *A retailer who electronically reads an identity*
10 *card as permitted by this title may not store the information*
11 *obtained unless one of the following is true:*

12 (1) *Storage of the information is necessary to comply with state*
13 *or federal law requiring a background check in the sale or transfer*
14 *of a firearm.*

15 (2) *The information is stored for the purpose of communicating*
16 *with an organ or tissue registry.*

17 (3) *The information is stored for the purpose of detecting or*
18 *preventing intentional misrepresentation of a consumer or*
19 *prospective consumer's identity.*

20 (4) *The consumer consents to the storage of the information*
21 *after full, clear, and conspicuous disclosure by the retailer:*

22 (A) *That consent to the storage of the information is voluntary.*

23 (B) *Of the information that the retailer will store.*

24 (C) *Of the purposes for which the information will be used by*
25 *the retailer or by anyone with whom the retailer shares the*
26 *information.*

27 (D) *Of the period for which the information will be stored.*

28 (5) *The retailer takes all steps necessary to protect the*
29 *information from access by an unauthorized person or for*
30 *purposes other than those permitted by this title.*

31 (b) *When stored personal information is no longer needed for*
32 *the purpose for which it was obtained, a retailer shall destroy, or*
33 *arrange for the destruction, of the information.*

34 1748.38. (a) *A retailer who reads an identity card as*
35 *permitted by this title may not share any information obtained*
36 *except under one of the following circumstances:*

37 (1) *The consumer consents to the sharing of the information*
38 *after a full, clear, and conspicuous disclosure by the retailer:*

39 (A) *That consent to the sharing of the information is voluntary.*

40 (B) *Of the information that the retailer will share.*

1 (C) Of the parties with whom the retailer will share the
2 information.

3 (D) Of the purposes for which the information will be shared.

4 (E) Of the period for which the information will be shared.

5 (2) The information is shared with an organ or tissue registry.

6 (3) The information is provided to a law enforcement agency
7 for the purpose of law enforcement.

8 (4) The sharing of the information is compelled by law or court
9 order.

10 (5) The sharing of the information is necessary and relevant to
11 a legal proceeding.

12 (b) A retailer may not sell personal information obtained by
13 reading an identity card under any circumstances.

14 1748.39. (a) In addition to any other remedy provided by law,
15 a consumer whose personal information is read, stored, shared,
16 sold, or otherwise used in violation of this title may bring an action
17 to recover actual damages or one thousand five hundred dollars
18 (\$1,500), whichever is greater, as well as any equitable relief
19 available. A prevailing consumer shall be awarded reasonable
20 costs and attorney's fees.

21 (b) If a court finds that a violation of this title was willful or
22 knowing, the court may, in its discretion, increase the amount of
23 the award to an amount not more than three times the amount
24 available under subdivision (a).

25 1748.40. A retailer may not deny a consumer or prospective
26 consumer a good or service because the consumer or prospective
27 consumer has exercised the right under this section not to allow his
28 or her identification card to be read electronically. Any waiver of
29 a provision of this title is contrary to public policy, and is void and
30 unenforceable.